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demand for his bread. In an action by the plaintiff for the price of the flour, the defendant counterclaimed for loss of business due to the inferior quality of the bread. *Held*, that when the defendant discovered that the flour was bad, he was under a *duty* not to so use it as to increase his damages and, therefore, he could not recover on his counterclaim. *Saxony Mills v. Huck* (1919, Mo. St. L. App.) 208 S. W. 868.

The decision in the principal case would be disputed nowhere. 2 Sedgwick, *Damages* (9th ed. 1912) sec. 764; 1 Sutherland, *Damages* (4th ed. 1916) sec. 88; 13 *Cyc.* 71. But it is believed that the court misnamed the legal relation which barred recovery on the counterclaim. The court termed it a *duty* to mitigate damages. If there were such a *duty*, the defendant would not only fail in his counterclaim but would himself be liable to an action for damages. The failure of the counterclaim rests rather upon the legal *disability* of the defendant to charge the plaintiff with damages which he himself might have prevented. See (1919) 28 YALE LAW JOURNAL, 827.

EVIDENCE—ACQUITTAL OF PENAL CHARGE—EVIDENCE IN CIVIL ACTION—FORFEITURE.—Under a statute which provided for the forfeiture of all vehicles used to transport liquor, proceedings were instituted to condemn the defendant's automobile. The defendant offered in evidence an acquittal of a penal charge based on the same transaction. *Held*, that the verdict of acquittal was admissible. *Duncan v. State* (1919, Ga.) 99 S. E. 612.

The peculiar characteristics of forfeiture proceedings are again illustrated. See (1919) 28 YALE LAW JOURNAL, 824. An acquittal of a criminal prosecution is not admissible in evidence by the defendant in a civil action. *Coffey v. United States* (1886) 116 U. S. 436, 443, 6 Sup. Ct. 437. But in an action to enforce a forfeiture, where the parties and issues are identical with those in the criminal case, such acquittal is admissible. *Gelston et al. v. Hoyt* (1818, U. S.) 3 Wheat. 246.

EVIDENCE—EXISTENCE OF CONSPIRACY—CHARACTER OF CO-CONSPIRATOR—RELEVANCY.—The defendant was indicted with one Cowan for conspiracy. To show that it was not probable that he would enter into a combination with such a man, the defendant sought to establish that this co-conspirator was addicted to the excessive use of liquor which rendered him mentally incompetent at times, which fact was known to the defendant. *Held* (two judges *dissenting*), that such evidence was inadmissible. *State v. Taylor* (1919, N. J. Ct. Err.) 107 Atl. 423.

This case deals with a point on which there is little authority. The court placed its decision on the grounds that the character of a person cannot be established by specific acts, and that evidence of the bad character of a co-conspirator is irrelevant. The first point is well settled; and in support of the second there is authority that good character cannot be shown. *Walls v. State* (1890) 125 Ind. 400, 25 N. E. 457; *Omer v. Commonwealth* (1894) 95 Ky. 353, 25 S. W. 594. It would seem that the decision in the principal case was correct, otherwise the character of the co-conspirator would always be in issue, and be of little, if any, probative value.

INSURANCE—FIRE INSURANCE—VACANCY CLAUSE—BUILDING UNOCCUPIED WHEN POLICY ISSUED.—The plaintiff sued on a policy of fire insurance which contained a provision that if the buildings became vacant and remained so for ten days, the policy should be void. The building was vacant when the policy